

WT Docket No. 03-66
Grandfathered E and F Channel Stations

Issue: As licensees transition to the new EBS/BRS band plan, how should the Commission address grandfathered E and F group licensees that have overlapping protected service areas with co-channel commercial E and F group licensees? *FNPRM at ¶ 333-343.*

Proposed Solution: Geographic service areas should be established for all grandfathered E and F group licensees just as they are established for all other licensees – through use of the “split-the-football” solution recommended by WCA-NIA-CTN.

1. With the exception of NY3G, *all* commenting parties support the split-the-football solution proposed by WCA, CTN, and NIA.

- “[T]he record overwhelming supports the adoption of the proposals advanced by WCA and NIA/CTN, among others, for addressing the licensing of grandfathered EBS E and F Group licensees and those BRS lottery winners with overlapping protected service areas.” WCA Reply Comments at 33-34.
- “[N]o special rule is called for with regard to two stations whose areas largely overlap each other... [Even with a constrained GSA], it would be entirely feasible ... to provide a mobile/data phone service in the GSA, even without cooperation from adjoining GSAs.” Red New York E Partnership Comments at 4-5.
- “The Commission should determine the geographic area size of the grandfathered E and F group licenses in precisely the same manner as all other licenses: the Commission should use the ‘splitting-the-football’ approach recommended in the Coalition Proposal and adopted in the BRS/EBS Report and Order.” Nextel Reply Comments at 13.
- Other supporters include Clearwire Corporation, Stanford University, School Board of Miami Dade County, and the licensees of 17 grandfathered E/F group stations which “vigorously oppose the self-serving position of NY3G...” Joint Reply Comments of EBS Parties at 6.

2. The record solidly refutes NY3G’s assertion that the split-the-football approach will prevent the deployment of broadband service to a large segment of New York.

- Limited size GSAs are not unique to New York. Hundreds of licensees within the EBS/BRS band have constrained GSAs. Thus, NY3G’s situation is no more problematic than other BRS/EBS licensees with heavily overlapping PSAs, and thus often generating odd looking GSA boundaries that generally do not adhere to city or county boundaries, or to natural boundaries.

- NY3G's GSA would cover over 8 million persons. Application of the split-the-football approach would result in the creation of a GSA for NY3G that would cover over 8 million persons – larger than many other licensees in the band.
- The filings made by others solidly refute NY3G's contention that it cannot effectively deploy broadband services under the split-the-football rule.
 - Even with a more constrained GSA than NY3G would have, “it would be entirely feasible, as shown by Attachment A hereto, the Design Study Report of C.J. Hall, to provide a mobile/data phone service in the GSA, even without cooperation from adjoining GSAs.” Red New York E Partnership Comments at 4-5.
 - The “comments submitted by the E group BRS licensee in New York, illustrate that, even with a much more constrained GSA than NY3G would have, advanced wireless communications services can be successfully provided under the new BRS/EBS rules.” WCA Reply Comments at 33.
 - “The need to avoid interference in the vicinity of a GSA border is hardly unique to the [NY3G] situation. Rather, interference avoidance techniques such as cross-polarization, directional antennas, handset power control, frequency coordination, and the astute locating of cells near a GSA border to take full advantage of terrain and man-made obstructions, will need to be played out throughout the country.” Hammett & Edison Consulting Engineers, attachment at page 3 to TVC ex parte filing made 4/27/05.
 - Nextel is not concerned that the split-the-football approach will inhibit its ability to deploy broadband service in New York. “Due to the legacy site-by-site licensing regime in the 2.5 GHz band, any devices in the 2.5 GHz band that are designed to be used beyond a specific area or location will generally need to incorporate some degree of frequency agility to operate on the particular frequencies that happen to be available in any given location.” Nextel Reply Comments at 13.

3. TVC supports broadband deployment in the EBS/BRS band.

- TVC is a strong proponent of broadband deployment. TVC's Executive Director, Monsignor Michael Dempsey, serves as President of CTN, which is one of three entities that led an industry-wide coalition to reform the EBS/BRS rules to *facilitate* the deployment of broadband services.
- TVC's spectrum is available for broadband deployment. Although TVC's primary mission is to serve the educational and religious needs of the New York community, TVC has leased, and continues to lease, portions of its spectrum for commercial use.

- Sprint Nextel intends to use TVC's spectrum for broadband deployment. Sprint Nextel, which currently leases the grandfathered F group from TVC, is ready, willing and able to use TVC's spectrum for broadband deployment.

4. Any alleged "market failure" in the 2.5 GHz band is nationwide in scope and not unique to New York.

- Any "market failure" cannot be attributed to single market or licensee. Any alleged "market failure" concerning use of the 2.5 GHz band is not unique to New York. The broad failure of wireless cable to succeed in the marketplace cannot be attributed to a single licensee in a single market. Rather, any market failure is nationwide in scope and can be attributed to changes in technology, and the lack of proper technical and regulatory rules governing the 2.5 GHz band. Those rules have now been changed, due in large part to the efforts of Monsignor Michael Dempsey through the Catholic Television Network, which helped lead an industry-wide effort to revamp the entire 2.5 GHz band.
- New FCC rules address any market failure. The new rules governing the 2.5 GHz band are now in place and licensees are planning for transitions to the new band plan. Future market success is further enhanced by the Commission's Secondary Market initiatives, which now make commercial leasing of 2.5 GHz spectrum even more attractive than it has been in the past. Thus, the regulatory and technical frameworks are now in place for both commercial and non-commercial broadband deployment in the band.
- Regulatory certainty can best be achieved through extension of the split-the-football rule to E and F group licensees. With respect to the E and F group, there certainly is a need for regulatory certainty, and the Commission should take action to assign clear and consistent spectrum rights for all licensees in the band going forward. However, regulatory certainty can best be achieved simply by extending the split-the-football rule that applies to all other channels to the E and F groups as well.

Requested Action

Adopt the split-the-football approach, which has been endorsed by the overwhelming majority of parties in this proceeding to address the rights of grandfathered E and F licensees and co-channel BRS licensees in the absence of voluntary agreements among affected parties.